

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
WESTERN DIVISION

ANITA BRAVE HEART, Administrator of the Estate of Jamie Brave Heart, Plaintiff, vs. UNITED STATES OF AMERICA, Defendant.	CIV. 18-5054-JLV ORDER
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Plaintiff Anita Brave Heart brought this action under the Federal Tort Claims Act alleging an Oglala Sioux Tribe Department of Public Safety officer negligently killed Jamie Brave Heart. (Docket 1). On June 18, 2020, the court entered an order granting Ms. Brave Heart's attorney's motion to withdraw. (Docket 36). The court also ordered Ms. Brave Heart to (1) retain new counsel, (2) inform the court by letter if she intended to proceed *pro se*, or (3) request court appointed counsel by July 31, 2020. Id. at p. 2. To date, Ms. Brave Heart failed to respond to the court's directive. Additionally, on September 14, 2020, the government filed a motion for summary judgment, along with a memorandum in support of its motion, a statement of undisputed material facts and a declaration of the Assistant United States Attorney pursuant to 28 U.S.C. § 1746. (Dockets 38-41). Ms. Brave Heart failed to file any response to the government's motion, and nothing has been filed on the docket since September 14, 2020.

“A district court has discretion to dismiss an action under [Fed. R. Civ. P.] 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.” Henderson v. Renaissance Grand Hotel, 267 Fed.Appx. 496, 497 (8th Cir. 2008). Ms. Brave Heart failed to comply with the court’s order of June 18, 2020, and her lack of response to the government’s motion for summary judgment additionally indicates a “failure to prosecute” her complaint. Smith v. Gold Dust Casino, 526 F.3d 402, 405 (8th Cir. 2008) (internal quotation omitted). Accordingly, it is

ORDERED that the complaint is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b).

IT IS FURTHER ORDERED that defendant’s motion for summary judgment (Docket 38) is denied as moot.

Dated August 5, 2021.

BY THE COURT:

/s/ *Jeffrey L. Viken*

JEFFREY L. VIKEN
UNITED STATES DISTRICT JUDGE